

unpatentable over CyberDiner Internet Café Systems (hereinafter "CyberDiner"), in view of the *Blue Ginger* webpage at the Boston Globe website (hereinafter "Blue Ginger"). In addition, the Patent Office rejected Claims 21, 22 and 24 under 35 U.S.C. §103(a) as being unpatentable over *CyberDiner*, in view of *Blue Ginger*, and further in view of *Koether*.

By the present Amendment, Applicant amended Claim 25. Applicant submits that the amendment to the application and the reasons that follow overcome the rejections made by the Patent Office and place the application in condition for allowance.

With respect to the rejection of Claims 25 and 27-29 under 35 U.S.C. §102(e) as being anticipated by *Lincke et. al.*, Applicant submits that the amendment to Claim 25 overcomes the rejection under 35 U.S.C. §102(e) and places the application in condition for allowance. Notice to that effect is requested.

In this rejection, the Patent Office stated:

Lincke et al. disclose a system and method for providing real-time information regarding a restaurant, comprising: providing a portable apparatus 100 operated by a user, wherein the portable apparatus 100 has an input means, a wireless transmission means, and a display 101; providing a form 105 on the display 101 of the portable apparatus 100, wherein the form 105 includes information that the user implements to enter as the real-time information regarding the restaurant, wherein the real-time information includes

features of the restaurant, including at least one of the food served at the restaurant, service at the restaurant, and ambiance of the restaurant 9see, for example, Figure 3); inputting the real-time information regarding the restaurant into the portable apparatus by the user; processing the real-time information input by the user; and, transmitting the real-time information 305 input by the user to a destination remote from the restaurant.

However, Claim 25, as amended, requires providing a form on the display of the portable apparatus wherein the form includes information that the user implements to enter as the real-time information regarding the restaurant at the restaurant wherein the real-time information includes features of the restaurant including at least one of the food served at the restaurant, service at the restaurant and ambiance of the restaurant. In addition, amended Claim 25 requires inputting the real-time information at the restaurant regarding the restaurant into the portable apparatus by the user. (Emphasis added.)

Lincke et. al. merely teaches a method for finding the name and phone number of a restaurant based on a number of search criteria. *Lincke et. al.* allows a user to find a restaurant based on, for example, price, location and type of food. The user may input location, type of food and/or price to retrieve a list of suitable restaurants.

However, nowhere does *Lincke et. al.* teach or suggest

inputting the real-time information at the restaurant into the portable apparatus by the user as required by amended Claim 25. Moreover, nowhere does *Lincke et. al.* teach or suggest providing a form on the display of the portable apparatus wherein the form includes information that the user implements to enter as the real-time information regarding the restaurant at the restaurant as required by amended Claim 25. Actually, *Lincke et. al.* teach away from the present invention as defined by Claim 25. *Lincke et. al.* teach searching information regarding a restaurant unknown to the user. However, Claim 25 requires inputting real-time information regarding the restaurant at the restaurant wherein the user is inputting information known to him/her at the restaurant. Therefore, the rejection of Claim 25 is improper and should be withdrawn.

Claims 27-29 depend from Claim 25. These claims are further believed allowable over *Lincke et. al.* for the same reasons set forth with respect to Claim 25 since each sets forth additional steps of Applicant's method.

With respect to the rejection of Claims 9-14 under 35 U.S.C. §103(a) as being unpatentable over *CyberDiner*, in view of *Blue Ginger*, Applicant submits that the remarks and arguments below overcome the rejection under 35 U.S.C. §103(a) by the Patent Office and places the application in condition for allowance.

Notice to that effect is requested.

The Patent Office alleges that *CyberDiner* teaches:

"a restaurant, the restaurant having personal computers connected to the Internet for providing Internet access to restaurant patrons (thereby enabling the patrons to access Internet websites), the restaurant therefore inherently having within it (at each patron's computer) an apparatus comprising: an input means and a transmission means, wherein the obvious self-evident method of use is to input real-time information into the apparatus to be transmitted remotely from the restaurant (to the Internet) by the transmission means in real-time; a receiving means; a display means connected to the apparatus that displays the information; a processing means; an input means (information being displayed simultaneously while it is input into the processing means); and, a network (to which the patron's computer is connected) remotely receiving the information from the apparatus, the network being the Internet"

However, the Patent Office admits that *CyberDiner* fails to disclose real-time information being entered into the apparatus concern the restaurant and posting the transmitted real-time information at a website outside of the restaurant for viewing by persons outside of the restaurant.

With respect to *Blue Ginger*, the Patent Office alleges the website displays information concerning a restaurant (reviews of the restaurant) that have been entered into the Internet and posted at the website by patrons of the restaurant. However,

the Patent Office admits "the information is not specifically disclosed as having necessarily been entered into the Internet and transmitted to the website in real-time, while the restaurant patron was still in the restaurant." (See Office Action, page 5.)

According to the Patent Office, Applicant's invention would be obvious to one of ordinary skill in the art based on the teachings of *CyberDiner* in view of *Blue Ginger*. Applicant, however, respectfully submits that the rejection under 35 U.S.C. §103(a) is improper and should be withdrawn.

Independent Claim 9 requires the step of inputting the real-time information into the input means of the first apparatus wherein the real-time information includes information regarding the restaurant. Claim 9 further requires the step of transmitting the real-time information to a destination remote from the restaurant. Neither *CyberDiner* nor *Blue Ginger*, taken singly or in combination, teach or suggest inputting or transmitting real-time information regarding a restaurant as required by Claim 9.

Actually, *Blue Ginger* teaches away from the present invention as defined by Claim 9. *Blue Ginger* teaches transmitting information regarding a restaurant, which is not in real-time. In fact, the Patent Office admits that "the

information is not specifically disclosed as having necessarily been entered into the Internet and transmitted to the website in real-time." (See Office Action, page 5.) Furthermore, all of the reviews on the *Blue Ginger* website are written in past tense, because each review was written long after the user has visited the restaurant. For example, one user said, "we went to *Blue Ginger* several weekends ago". Moreover, Merriam-Webster's Collegiate Dictionary defines real-time as "the actual time during which something takes place." (See Exhibit B.) The Patent Office, however, interprets real-time restaurant information to be posting a review of a restaurant "as quickly as possible, while the dining experience was still fresh in the mind of the reviewer." (See Office Action, page 5.) Such an interpretation is unsupported by the commonly accepted definition of "real-time". In addition, *CyberDiner* merely teaches the installation of Internet capable computers into a café or other establishment. *CyberDiner* does not teach or suggest inputting or transmitting real-time information regarding a restaurant.

Moreover, one of ordinary skill in the art at the time of Applicant's invention would never have been motivated to combine *CyberDiner* with *Blue Ginger* in the manner suggested by the Patent Office in formulating the rejection under 35 U.S.C.

§103(a). Applicant submits that the Patent Office is merely "piece-mealing" references together, providing various teachings and positively defined limitations of Applicant's method of providing real-time restaurant reviews to deprecate Applicant's invention. Of course, hindsight reconstruction of Applicant's invention is impermissible.

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. In re Simon, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most if not all elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983).

It is insufficient that the art disclosed components of Applicant's invention, either separately or used in other combinations. A teaching, suggestion, or incentive must exist to make the combination made by Applicants. Interconnect

Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

With the analysis of the deficiencies of *CyberDiner* and *Blue Ginger* in mind, no reason or suggestion in the evidence of record exists why one of ordinary skill in the art at the time of Applicant's invention would have been led to modify *CyberDiner* with *Blue Ginger* in the manner suggested by the Patent Office in formulating the rejection under 35 U.S.C. §103. Therefore, *prima facie* obviousness has not been established by the Patent Office as required under 35 U.S.C. §103.

Even assuming that one having ordinary skill in the art could somehow have combined the references applied by the Patent Office, the references still lack the novel features and structural relationships and the novel steps positively recited in Claims 9-14, respectively. Namely, neither *CyberDiner* nor *Blue Ginger*, taken singly or in combination, teach or suggest inputting or transmitting real-time information regarding a restaurant as required by Claim 9. Accordingly, the rejection of Claims 9-14 under 35 U.S.C. §103(a) is improper and should be withdrawn. Notice to that effect is requested.

Claim 10-14 require transmitting, retrieving, posting and accessing, respectfully, the real-time information regarding the restaurant. Neither *CyberDiner* nor *Blue Ginger*, taken

individually or in combination, teach or suggest methods for transmitting, retrieving, posting and accessing real-time information regarding the restaurant. Therefore, the rejection of Claims 10-14 is improper and should be withdrawn. Notice to that effect is requested.

With respect to the rejection of Claims 21, 22 and 24 under 35 U.S.C. §103(a) as being unpatentable over *CyberDiner*, in view of *Blue Ginger*, and further in view of *Koether*, Applicant submits that the remarks and arguments below overcome the rejection under 35 U.S.C. §103(a) by the Patent Office and places the application in condition for allowance. Notice to that effect is requested.

Claim 21 requires providing a wireless device located in the restaurant wherein the wireless device is used by the patron. In addition, Claim 21 requires inputting information into the wireless device regarding information about the restaurant. *CyberDiner*, *Blue Ginger* and *Koether* taken individually or in combination, do not teach or suggest inputting information into the wireless device regarding information about the restaurant as required by Claim 21. *Blue Ginger* merely teaches a website where users may after leaving a restaurant post a review. Actually, *Blue Ginger* teaches away from the present invention as defined by Claim 21. The restaurant reviews of *Blue Ginger* are

written outside of the restaurant and after the patron has left the restaurant. For example, one user said, "we went to Blue Ginger several weekends ago." Likewise, *CyberDiner* teaches away from the present invention as defined by Claim 21. *CyberDiner* requires "a place to put it and a place to plug it in" (emphasis added). Furthermore, nowhere does *CyberDiner* teach or suggest inputting information regarding a restaurant. Moreover, *Koether* does not teach or suggest inputting information regarding the restaurant. *Koether* teaches a system and a method for monitoring and controlling "kitchen or restaurant appliances located over a wide geographical area." See *Koether*, col. 3, lines 52-54. The communication in *Koether* does not relate to information regarding the restaurant. Specifically, the information provided to the apparatus in *Koether* is, for example, "cooking parameters, billing information, appliance identification, diagnostic information, and maintenance instructions". See *Koether*, col.5, lines 25-28. Thus, the information in *Koether* relates merely to kitchen appliances.

Moreover, one of ordinary skill in the art at the time of Applicant's invention would never have been motivated to combine *CyberDiner* with *Blue Ginger* and further with *Koether* in the manner suggested by the Patent Office in formulating the

rejection under 35 U.S.C. §103(a). Applicant submits that the Patent Office is merely "piece-mealing" references together, providing various teachings and positively defined limitations of Applicant's method of method of providing real-time restaurant reviews to deprecate Applicant's invention. Of course, hindsight reconstruction of Applicant's invention is impermissible.

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. In re Simon, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most if not all elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983).

It is insufficient that the art disclosed components of Applicant's invention, either separately or used in other combinations. A teaching, suggestion, or incentive must exist

to make the combination made by Applicants. Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

Even assuming that one having ordinary skill in the art could somehow have combined the references applied by the Patent Office, the references still lack the novel features and structural relationships and the novel steps positively recited in Claim 21. Namely, *CyberDiner*, *Blue Ginger*, and *Koether*, taken singly or in combination, do not teach or suggest inputting information into the wireless device regarding information about the restaurant. Accordingly, the rejection of Claims 21 under 35 U.S.C. §103(a) is improper and should be withdrawn. Notice to that effect is requested.

Claims 22 and 24 depend from Claim 21 and are believed allowable over *CyberDiner*, *Blue Ginger* and *Koether* for the reasons set forth with respect to Claim 21 since each sets forth additional steps of Applicant's method.

In view of the foregoing amendment and remarks, Applicant respectfully submits that all of the claims in the application are in allowable form and that the application is presently in condition for allowance. If, however, any outstanding issues remain, Applicant urges the Patent Office to telephone Applicant's attorney so that the same may be resolved and the

application expedited to issue. Applicant requests the Patent Office to indicate all claims as allowable and to pass application to issue.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that this **Response to Office Action** is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 27, 2004.



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